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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Preliminary report on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution, prepared by Mr. José Bengoa, in conformity with resolution 1994/40 of the Subcommission and decision 1995/105 of the Commission on Human Rights

Introduction

1. At its fifty-first session, held in 1995, the Commission on Human Rights, in decision 1995/105, approved the decision of the Subcommission to appoint a Special Rapporteur on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution, at both national and international levels. The Special Rapporteur was requested to take into account "the preliminary and final reports of the Special Rapporteur of the Subcommission on human rights and extreme poverty and matters related to the realization of the right to development". The objective proposed to the Special Rapporteur is to determine "how most effectively to strengthen activities in this field". In resolution 1994/40 of the Subcommission, of which the Commission took note, emphasis was placed on the need to take into account the reports of the Special Rapporteurs, Mr. Danilo Türk and, in particular, Mr. Asbjørn Eide, submitted to the forty-sixth session. The Special Rapporteur was also requested "to pay particular attention to the impact of the enjoyment of human rights, and that of the right to education in particular". On the basis of this mandate, the Special Rapporteur has prepared the following preliminary report.

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I. FOCUS OF THE REPORT

2. Poverty and the unequal development of countries is currently a subject of concern to all. The statistics are unquestionably worrying. Millions and millions of people fail to enjoy even the generally accepted minimum standards of economic, social and cultural rights. Apart from denouncing the current situation, a report on this topic could prove extremely frustrating if it failed adequately to determine its aims and scope.

3. This preliminary report adopts the approach proposed by the Special Rapporteur, Mr. Danilo Türk, in his final report, in which he asked himself the following question: "Is the goal of human rights to set limits and tell the State what to do, or to free space for people to find solutions to their problems by themselves?" He then added: "New standards, the vast majority of which are totally unknown by the people they are allegedly designed to protect, ... are often ignored and also provide a useful 'smokescreen' ... . The setting of new standards without accompanying measures of monitoring and enforcement is no guarantee that the issues addressed will be adhered to and fulfilled". (E/CN.4/Sub.2/1992/16, paras. 189-190).

4. The study may possibly lead to the recommendation of a particular new norm relating to economic, social and cultural rights, linked with the specific aspects of the mandate, although this should be neither the focus of the study nor its main objective. In our view it is more important to help to create a "forum for discussion" which, besides drawing attention to the importance and validity of economic, social and cultural rights as fundamental human rights, may offer a large number of those concerned, Governments and civil society, an opportunity to submit proposals in order better to realize those rights. We are guided by the conviction that without a major international effort to improve the distribution of wealth, narrow the gap between rich countries and poor, offer the poor countries scope to develop, and permit the gradual and full realization of economic, social and cultural rights, world peace will be constantly under threat. An inescapable function of such organs as the Subcommission is to provide a forum for a continuing debate on such issues, and to become a source of proposals and constructive ideas for the United Nations system as a whole.

5. We endorse the proposals made in the Programme of Action adopted at the World Summit for Social Development in Copenhagen, and in particular the appeal made in chapter V, "Implementation and follow-up", to international organizations under which "all specialized agencies and related organizations of the United Nations system are invited to strengthen and adjust their activities, programmes and medium-term strategies, as appropriate, to take into account the follow-up to the Summit". (A/CONF.166/9, chap. I, resolution 1, annex, para. 96 (b)). It is thus appropriate to bring the mandate into line with the conclusions of the Summit for Social Development and to set the proposals within the context of that international event, and in particular of the designation of 1996 as International Year for the Eradication of Poverty. The Subcommission should play a key role in developing the ways and means requested and suggested by the Summit for Social Development to the international system to ensure more effective fulfilment of its goals.

II. CHALLENGES FACED BY THE STUDY

6. The broad challenge faced by a study of this kind is to answer the following questions as clearly as possible: By what means can it be ascertained when economic, social and cultural rights are observed or violated? And as a corollary of this, by what means can national and international responsibility be assigned for such violations? The Special Rapporteur is not unaware of the enormous difficulty entailed.

7. Economic, social and cultural rights were systematized, regulated and brought within the scope of international agreements within a specific historical context, which was essentially the result of the pressure and demands of the grass-roots social movements that had emerged at the close of the previous century, of the new States that had come into being both in the first and in the third world, and of a particular conception of the State which had taken shape during the first half of this century. The Versailles Treaty of Peace already made provision for the setting up of the International Labour Office, thereby recognizing labour rights. Between 1920 and 1946, international labour law, which is a substantial component of economic, social and cultural rights, was developed. In the immediate aftermath of the Second World War the Charter of the United Nations "which repeatedly refers to fundamental human rights (preamble, para. 2), was debated and prepared ... and it is clear from the immediate background to the text and from the context, that the reference to human rights encompassed the concept of economic, social and cultural rights". 1/ The Universal Declaration of 1948 "expressly takes up this wide-ranging, comprehensive concept of human rights". 2/ The Covenant was adopted on 16 December 1966 and came into force on 3 January 1976. The rights in question are clearly recent ones. As Professor Cees Flinterman has observed, "The process of 'codification' is still going on. ... It reflects the essential dynamism of the human rights tradition. New needs, issues, claims and developments urge both national communities and the international community to further strengthen the human rights framework". 3/ Obviously, the context from which economic, social and cultural rights emerged is changing, although this does not mean that they have ceased to be valid. However, the cogency of their formulation is either no longer attractive to contemporary political culture or dissolves into a series of well-intentioned statements disconnected from the practical mechanisms governing contemporary human coexistence. The permanent challenge facing the human rights bodies and in particular the Subcommission, is to link new needs and new problems to the effectiveness of those rights.

8. Just what is the modern, present-day view of economic, social and cultural rights? The challenge facing a study on the relationship between these rights and income distribution, with special emphasis on the subjects of development and poverty, is to restore their mobilizing force, their thought-provoking capacity, their rallying power. The traditional view, which commonly appears in the texts, is that the State is the sole custodian of economic, social and cultural rights. The international human rights instruments lay down the limits of State action and its obligations. Where civil and political rights are concerned, the obligation of the State is as follows:

> "Not to violate or impair them through an act of omission or commission, as the case may be, by a governmental or administrative organ or agent ... . On the other hand, where economic, social and cultural rights are concerned, the essential, albeit not exclusive obligation of the State is to take action; it must provide the material resources whereby the welfare, social, health, cultural and other such services can take the necessary steps to ensure their enjoyment. However, they do not presuppose a direct and immediate entitlement to demand concretely and specifically that the State provide the services that recognition of the right inherently requires. The State's obligation lies in the bounden duty to devote, within the limits of its economic and financial means, the resources necessary to ensure the realization of these rights. ... At the present stage in the development of international law, it is only possible to address such questions as the affirmation and enumeration of economic, social and cultural rights, the recognition, by treaty, of the obligation to promote and observe them and the assertion of the legal duty of States to devote their resources and economic and financial policies, in so far as their actual possibilities permit, to ensuring their realization. Accordingly, the international system of protection can only involve systematic, constant, and critical study and analysis, through appropriate organs and procedures, of the generic obligation of States to devote their economic and financial resources to this end." 4/

The abstract and general nature of these obligations transforms the norm into a "wish", i.e. a harmless statement of good intention. The present situation, as the author cited points out, is that the purposes and full realization of these rights are clearly not enforceable. The present challenge in this sphere is to surpass the stage of "studies and analyses", as their repetitiveness and legal ineffectiveness are frequently responsible for the public discredit of the international agencies supposedly responsible for protecting them. For this reason we suggest a change of emphasis, a contemporary view of these rights, in keeping with new trends in international politics and judicial practice, and in particular with the new concepts of the State and its function in society.

9. A modern view of the economic, social and cultural rights of individuals should have as its focal point the "right to opportunity". The Declaration of Philadelphia clearly expresses the right of individuals in this respect, in the following words:

> "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity;".

The report by Mr. Eide is most explicit in this connection, and we fully endorse it. Quoting from the UNDP Human Development Report 1994, he notes that equity is "in opportunities, not in final achievements. Each individual is entitled to a just opportunity to make the best of his or her potential capabilities" (E/CN.4/Sub.2/1994/21, para. 63).

10. Without denying the responsibility of States for the realization of individual rights, the question obviously arises as to whether States are capable of ensuring the observance and full realization of economic, social and cultural rights. In most cases, the answer will be no. What then is the duty of States? It would appear that their primordial duty will be to provide the opportunities for this to come about. The right to opportunity thus becomes the focus of the theoretical and practical debate about the effective exercise of economic, social and cultural rights.

11. Consistent with this, we should make it clear that a violation of these rights occurs if barriers are raised to prevent individuals from enjoying equal opportunities. The right violated is the "right to opportunity". Such a violation may occur as a result of various factors: political, social, economic or cultural discrimination; the existence of objective barriers for particular sections of the population; and the existence of objective circumstances which, although they are susceptible to change, are not changed by a particular State, at the national level, or by several States together at the international level. Paul Hunt, a professor at the University of Waikato in New Zealand, accordingly notes that "protection of social rights is clearly important for all groups, but obviously it is particularly significant for marginal, disabled or underprivileged groups". 5/

12. The report by Mr. Türk drew attention to changes taking place in virtually all countries in the contemporary world regarding the concept of the State, and pointed out their consequences for the conceptualization of economic, social and cultural rights. Plainly, if these rights turn on the obligation of States "to satisfy the needs" of the population, "by providing the means necessary to do so", the building of a "welfare State" would be inherent in these rights. The reduction in the State's role, which is widespread in today's world, would give rise to huge difficulties in ensuring the effective exercise of these rights. This is why it is necessary to assert the State's duty to devote all possible efforts and resources, as is required by the Covenant, but in particular to offer equality of opportunity, by sweeping away the barriers that prevent particular sections of the population, or a group of countries, from fully enjoying their rights.

13. The consequence of such a conceptualization of economic, social and cultural rights is the possibility of their being enforced by positive means. What has commonly been measured has been access to the right, i.e. the existence of housing, health, etc.; what has to be measured at present is equality of opportunity, the "right to opportunity" and hence the degrees of equity of a society which, together with other indicators, can be measured through the conceptualization of income distribution. In the near future this and other social indicators should be able to be fully incorporated into all the decision-making processes of international agencies, and in particular the financial agencies. Just as macroeconomic indicators are studied when evaluating programmes on development, international cooperation and investment, and the related projects, exchanges and cooperation are made conditional upon certain changes to them, social indicators, and in particular income distribution, should be taken into account at the national and international levels.

III. THE INTERNATIONAL CONTEXT AND THE STUDY OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

14. In his final report of July 1992, Mr. Türk foresaw that the "profound social and political changes" then taking place in the world "considerably enhance the importance of economic, social and cultural rights". And indeed, one of the many consequences of the end of the so-called "cold war" has been to highlight the globalization of international relations and existing inequalities. The issue of poverty has emerged as one of the key concerns to be addressed by the international community. Recently, at the World Summit for Social Development in Copenhagen, numerous speakers expressed their determination and commitment to combating extreme poverty and inequalities and to promoting social development.

15. The globalization of the world economy, the vast communications network, the universalization of patterns of consumption - in short, what has been described as life in the "global village" - connote interdependence. In the words of the philosopher Jürgen Habermas (1985): "Nowadays, all States, cultures and societies are so interconnected through the world market, communications, transport and technology that no one may affect ignorance of anyone else. We do not have a choice. If we do not want to be exposed to nuclear tribal warfare, we must agree on certain norms to ensure fair and harmonious relations. Human rights would be the solution ... Human rights are the fruit of a thought process that enables us to distance ourselves from our tradition and to learn how to understand others from their own viewpoint". He adds: "This is why we need norms for harmonious coexistence which ensure the integrity of each individual within the context of his or her own way of life". 6/

16. With the end of the cold war, the indivisibility of economic, social and cultural rights and civil and political rights has become self-evident. In his preliminary study, Mr. Türk raised the question of whether there existed a hierarchical ordering of the different types of human rights. Many are those who have maintained that inasmuch as economic, social and cultural rights are not immediately enforceable but can be realized only gradually and progressively, they are in a different category from civil and political rights. There are also many who considered the separation of the two Covenants to be a means of satisfying those international currents of opinion that gave priority to civil and political rights related to the principle of "freedom" over those that favoured equality and equity and emphasized economic rights. In recent years the international balance of opinion has tended to settle this paradox by reference to historical facts, pointing to the interdependence and indivisibility of both categories of rights. It is patently obvious that the exercise of civil and political rights is directly linked to that of economic, social and cultural rights, which are in turn linked to human rights as a whole. The Vienna Declaration brought the debate on this subject to a conclusive end, and its conclusions were reiterated in the Final Declaration of the World Summit for Social Development in Copenhagen.

17. The Declaration on the Right to Development, which was adopted by the General Assembly on 4 December 1986, clearly and fittingly expresses the new contemporary reality:

> "All human rights and fundamental freedoms are indivisible and interdependent and ..., in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights and ..., accordingly, the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms."

18. The human rights expert José Aylwin asserts the evolutionary nature of rights in the following terms:

> "Human rights are a set of principles or values which have gradually evolved throughout the history of mankind and become norms of both the domestic law of each country and international law, and are intended to regulate social relations so that they may be governed by an order that is based on freedom, equality, justice and peace." 7/

The emergence since the Second World War of human rights and of the Covenants as a distinct body of normative principles was in response to a specific historical situation that is now no more. There is no real sense to the debate on the establishment of a hierarchy between rights based on the principle of freedom and those based on the principle of equality. On the contrary - and this is the tenor of all the speeches and statements made at the World Summit for Social Development in Copenhagen - it is apparent that both of them are closely interdependent. If economic, social and cultural rights are not effectively realized, then civil and political rights "are reduced to mere formal categories. Conversely, if there are no real civil and political rights, if there is no effective freedom in the broadest sense of the word, economic, social and cultural rights in turn lack any real meaning". 8/ A consequence of the worldwide globalization that has taken place in the recent historical period has been to demonstrate the truth of the simultaneity and indivisibility of both categories of rights. The World Conference on Human Rights duly recognized this truth, thereby closing a lengthy debate.

The right to life, to the development of the human body and to individual dignity is the foundation of civil and political rights, and likewise of economic, social and cultural rights

19. The universality of the right to life has been demonstrated by the contemporary anthropological sciences. All the world's cultures have been guided by the imperative "thou shalt not kill", which represents the sine qua non for the survival of the species. Umberto Eco has said that one modern, and indeed contemporary, way of expressing the right to life is to uphold the right to physical integrity. Contemporary culture, in particular youth culture, is revolted by any act of violence against the human person, in particular against a person's body, his mental capacity, his capacity for emotional and intellectual development, his freedom of movement, and of physical, aesthetic and religious expression. Torture, for example, is an act

of aggression against the body in its physical and mental dimensions, which are indissociable. Racial discrimination is also a rejection of the body of the other, and consequently of his or her identity. In another legal sphere, air pollution is also an act of aggression against the body of the other, against his or her health, as is noise pollution, and the list goes on. All of these constitute acts of aggression against human life, against its physical corporality. The right of women to physical dignity is a topic that is nowadays of vital concern to individuals and to human rights organizations. All violations, from the most blatant involving physical attack, war, violence, to the least blatant, are acts of aggression against the right to live in dignity, to the inviolability of the human body, to the creation of the necessary space for all-round physical development.

20. Obviously, respect for life lies at the heart of civil and political rights philosophy. The originators of the democratic system sought in laws the means of protecting men from one another, so that they might set aside their violent instincts, come together, accept the will of the majority, reach agreement as rational beings and build a society in which life would not be threatened. The civil rights of individuals in relation to the State serve indeed as the system of protection whereby individuals need not fear the arbitrariness of authority and perceive their own lives as the fulfilment of the common good. The principle of life is the same principle that presides over economic, social and cultural rights. Moreover, it is frequently these rights that condition the corporality of life. If a person has no income and is unable to purchase food, his physical existence is jeopardized. If persons have neither a roof over their head, nor access to health, nor drinking water, their biological existence is jeopardized. The human body disappears. Without access to education, individuals are unable to communicate with one another, to understand the systems of signs, and are at a disadvantage for living in society, which is the minimal requisite for human existence. Without culture, identity, the right to a collective consciousness, to a religion, there can be no spiritual life. The human being, whose body and spirit are indissociably joined, withers away. The right to life is also the right to preserve one's bodily health, for the span of one's mortal existence. For men and women today health is a complex concept, involving all human rights. Herein lies the common principle.

21. This constituent principle of the right to life, in the sense of the possibility for the human body fully to realize itself, which is common to all humanity, is a basic right of individuals, merely by the fact of their birth as human beings. This is what Mr. Eide, quoting from the UNDP report, calls "the universalism of life claims":

> "Universalism of life claims is the common thread that binds the demands of human development today with the exigencies of development tomorrow, especially with the need for environmental preservation and regeneration for the future ...
>
> "But sustainability makes little sense if it means sustaining life opportunities that are miserable and indigent: the goal cannot be to sustain human deprivation. Nor should we deny the less privileged today the attention that we are willing to bestow on future generations ...

> "In such a conceptual framework, sustainability is, in a very broad sense, a matter of distributional equity - of sharing development between present and future generations. There would, however, be something distinctly odd if we were deeply concerned for the well-being of the future - as yet unborn - generations while ignoring the plight of the poor today. The ethic of universalism clearly demands both intragenerational equity and intergenerational equity (E/CN 4/Sub.2/1994/21, para. 63).

The universal principle of the right to life entails the need for intra- and intergenerational equity. This principle presides over human rights as a whole, both nationally and internationally.

22. Income distribution is the material and objective expression of relative levels of "intragenerational equity"; the management of natural resources and of the environment, the "right to sustainable development" is the expression of the level of "intergenerational equity" of societies; and thirdly, "international equity" expresses the fact that we live in an interconnected, globalized world in which we depend on one another and must therefore join together in solidarity.

Economic, social and cultural rights constitute the necessary minimum to guarantee the effective exercise of civil and political rights

23. Minimum economic, social and cultural rights are consequently those that make possible the material, social and educational conditions without which civil and political rights cannot be exercised. There is an intrinsic relationship between the enjoyment of political rights, democracy and the enjoyment of economic rights. The latter are the necessary but not sufficient condition for the full exercise of democracy.

24. For this reason the Türk report clearly points out the need to establish "the minimum core content of each economic, social or cultural right" (E/CN.4/Sub.2/1989/19, para. 31). The report quotes Philip Alston, who asserts: "There is an identifiable minimum core content of each right that cannot be diminished under the pretext of permitted 'reasonable differences'" (para. 30). This principle is plainly valid for all human rights without exception, as is demonstrated by the daily work of both the Subcommission and the Commission on Human Rights. Civil and political rights possess "minimum core contents" which are being defined with increasing precision as improvements are introduced into international treaties and conventions. No one, no country or State, could contend that any particular civil or political right is "perfectly" realized where it is concerned. No one could appropriate the intrinsic content of "democracy", for example. There will always be countries that are more democratic than others. Accordingly, as there exist in this field minimum requirements in respect of economic, social and cultural rights, a benchmark needs to be established in order to be able to apply them in real terms.

25. The "minimum core content" of economic, social and cultural rights is clearly determined by the needs that have to be fulfilled so that people can live with dignity. However, this minimum core content may be defined in terms of participation in civil and political life to which everyone has a right. Without the minimum economic conditions, people could not exercise their civil rights. This is increasingly borne out in the present age, not only in the poor countries of what is traditionally known as the third world but also in the developed countries. Extreme poverty, as is pointed out by the Türk report and the Despouy report, is in itself a denial of all rights and the ultimate embodiment of the indivisibility of human rights. The same can be said about all the specific rights, particularly the right to education and the other cultural rights. It is highly unlikely in today's world that someone who has not had access to education will be able to exercise his civil and political rights successfully. Economic, social and cultural rights have an objective existence in so far as they guarantee the social function of human beings, allow them to live in society and make for the exercise of civil and political rights.

The growing globalization of the economy and world society is giving rise to increasing integration which tends to give universal bearing to minimum requirements in respect of both economic, social and cultural rights and civil and political rights

26. A contemporary view of economic, social and cultural rights must clearly take into account the globalization of international trade, production, finance, communications, patterns of consumption and the aspirations of the great majority of the world population. As then inequalities are always relative, minimum requirements are historically determined. The case of education is undoubtedly instructive. For centuries, possibly in many countries, the inability to read and write did not necessarily mean poverty, marginality and absence of rights. This is evident in preliterate societies, but it was also true until not long ago in societies where writing was a usual form of expression. This is not the case today. The World Declaration on Education for All (UNESCO) and the New Delhi Declaration for a Holistic Vision of Education for All (World University Service) highlight the fact that in order to live and participate in the world of today it is necessary to have access to reading, writing and the main symbolic codes of the present age. Standards are higher than they used to be in this field. The right to education has taken the shape of minimum requirements, which are not the same as they were a few decades ago.

27. A similar point is made in the report of the Special Rapporteur Rajindar Sachar on the right to adequate housing. The key concept in the report is what can be considered "adequate" since, except for special situations, the persons considered have housing, but it is described as "inadequate". They are frequently considered to be simply without housing. Such is the well-known case of country people in the third world, who possess traditional dwellings made of flimsy materials, which in terms of modern standards are inadequate. The fact is that, if there were no global framework for comparison, such housing would be suitable for these country people. However, in the context of globalization, both observers and country people themselves come to find their housing inadequate.

28. Likewise, the globalization of the economy and world society is leading to changing standards in respect of income distribution. Equity, as a latter-day expression of the "decent life", has spread throughout the world together with the concept and practice of democracy. A democratic system with over-polarized income distribution is unworkable. It is also for this reason that, in the strictly economic sphere, there are increasing changes in what are regarded as minimum standards.

Income distribution both internationally and nationally is the principal indicator of social integration and of the fulfilment of minimum requirements in respect of economic, social and cultural rights, enabling human beings to live in society

29. What is the relationship between economic, social and cultural rights as described and income distribution? In a world characterized by increasing globalization, income distribution is one of the most important indicators of social integration or disintegration currently used for the purpose of comparative analysis. As is pointed out in the Eide report and has been recognized by the Subcommission, inequitable income distribution is at present becoming the main threat to world peace, political stability among nations and the maintenance of social life. Extreme inequality within a society and between nations always goes hand in hand with a denial of basic human rights.

30. It is obvious that societies have been in the past, are at present and will be in the future unequal. For this reason the concept of minimum core content is decisive for the study of these questions. The concept developed by Eide of "intolerable levels of income inequality" unquestionably possesses considerable explanatory value. They are deemed intolerable in the light not of an abstract moral code but of a set of objective and precise factors and indicators. What makes them intolerable is that they impede the social and political development of a society, or of a group of societies, under normal conditions. Extreme inequality proves intolerable for society and triggers all kinds of violence, war and crimes. In short, it impedes the normal development of social life.

31. A "fair income distribution", on the contrary, would be one that ensures the evolution of social life, makes "social integration" possible, encourages people to live in society, and leads to the full exercise of individual rights, i.e. of human rights. It is the practical application of the principle of what Habermas describes as the "good life", with the cultural specificities that characterize it.

32. Income distribution is then a graded indicator of social integration and of capacity to realise economic, social and cultural rights, within a system of limited resources, both nationally and internationally. One of the main objectives of the Special Rapporteur on this question in forthcoming reports should be to investigate this theoretico-methodological hypothesis, in other words, to determine these various degrees of "intolerableness".

IV. INCOME DISTRIBUTION, SCANT RESOURCES AND THE GRADUAL NATURE OF FULL ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

33. The applicability of economic, social and cultural rights is determined by their nature, which is relative. The subject of economic, social and cultural rights should not be trivialized, and so much so that any economic and social aspiration comes to be seen as a right. Clearly, at the present time, the well-to-do in the developed countries possess a huge variety of economic possibilities. It is natural to think that the majority of people aspire to the same standards of living. For all that, it cannot be said that these high standards of living are in themselves an economic right of each and every human being, and even less that they should be made into an enforceable right.

34. As was noted earlier, absolute minima are linked to the factors determining the degree of social integration of each particular society. A very poor but very tight-knit society will tend to ensure the economic, social and cultural rights of all its members and likewise fully guarantee their civil and political rights. The experience of many indigenous peoples in this regard has been extensively commented upon by present-day anthropologists. Conversely, a very rich but highly inegalitarian society will brutally flout individual rights and become a permanent theatre of conflict and violence. Unhappily, there are many examples that attest to this truth in our time.

35. Income distribution must therefore be two-pronged. Both prongs are clearly set out in article 2 of the International Covenant on Economic, Social and Cultural Rights. Under the Covenant, each State shall endeavour to ensure the realization of those rights "to the maximum of its available resources". This is the synchronic dimension of such rights. The second undertaking consists in "achieving progressively" the full realization of the rights in question. This is the diachronic dimension. Income distribution as an indicator of the realization of economic, social and cultural rights hinges on these two factors: the volume of resources available to each society and their deployment over a period of time. On the basis of this principle, explicitly referred to in the International Bill of Human Rights, the question of income distribution is not an abstract paradigm but becomes a historically determined objective. We are for this reason in agreement with the definition put forward in the report by Mr. Eide, who defines the term "in a neutral sense, as a measurement of the way in which income is distributed in a given society" (E/CN.4/Sub.2/1994/21, para. 17). Viewed from this angle, the concept of "income distribution" is an excellent means of measurement. The aim or desired outcome is equity, needs satisfaction and equality of opportunity.

36. We may wonder whether income distribution is an adequate indicator of the realization of the right to opportunity. Future reports should make an empirical study of this question, taking into account various factors, but it is without doubt a plausible hypothesis that the greater the differences in income distribution, the greater the differences in opportunity, so that there will be an impairment of the right to opportunity. We would in this case be characterizing a structural process of discrimination. Nelson Mandela, in his speech at the World Summit for Social Development, noted that poverty was "the new face of apartheid", that being born poor in a third world country was as

harsh a fate as being born a slave in earlier times, and indeed that poverty was the slavery of the modern world. We endorse this remark which may offer suitable guidance for a study on income distribution and the realization of economic, social and cultural rights. When all is said and done, income distribution is unquestionably an adequate indicator of the extent to which economic, social and cultural rights are realized. Income distribution is an expression of equity in respect of the material conditions of human existence.

V. THE RELATIONSHIP BETWEEN THE ENJOYMENT OF HUMAN RIGHTS IN GENERAL AND INCOME DISTRIBUTION AT INTERNATIONAL LEVEL

37. Income distribution at international level has been studied in various documents, produced both by the Subcommission and Commission and by the specialized agencies of the United Nations. The recent World Summit for Social Development expressed considerable concern about the existence of growing inequalities among countries. The main objective of Commitment 4, in particular, adopted in Copenhagen, is to achieve equity and social integration. "We commit ourselves to promoting social integration by fostering societies that are stable, safe and just and that are based on the promotion and protection of all human rights, as well as on non-discrimination, tolerance, respect for diversity, equality of opportunity, solidarity, security, and participation of all people, including disadvantaged and vulnerable groups and persons" (A/CONF.166/9, chap. I, resolution 1, annex, para. 29). This statement unquestionably constitutes an entire programme of action at both international and national levels.

38. The consequences for world peace of the unequal distribution of wealth are quite obvious. For this reason the common goals set by the Summit on Social Development should be taken up by human rights bodies. The developed countries' contribution of 0.7 per cent of GDP to development assistance is a goal to which all countries have solemnly committed themselves. The so-called 20/20 approach, consisting in collaboration on a shared basis between developed countries and underdeveloped countries in putting social plans and policies into practice, is another decisive initiative. This Special Rapporteur considers that the Subcommission is a good place to consider the steps taken to give effect to these aims, formally approved in Copenhagen. He suggests that the Subcommission pronounce on the appropriateness of addressing these matters so as to establish a "forum", as has been said, for follow-up, analysis and proposals, when the corresponding agenda item is discussed.

VI. WORK PLAN

39. In his report, Mr. Eide recommends that, "if a study is to be carried out, the larger question of income distribution should be broken up into appropriate components. The different contexts in which inequality of income can be observed should be addressed ... [since] differences in income often result from discrimination". He therefore recommends that a distinction be drawn between equality of opportunity between men and women, between members of different races and ethnic groups, and between migrant workers and nationals of the country concerned. In particular, he suggests that a study be made of disparity of income in rural areas, i.e. the rural poor and the high degree of vulnerability of today's urban poor. In future reports, the Special Rapporteur should therefore examine the various cases of violations of

the "right to opportunity", as defined above. This means analysing the various forms of economic, political, social and cultural discrimination that prevent particular groups of persons at national level from exercising their economic, social and cultural rights. The Special Rapporteur will request the Subcommission's authorization to ask Governments, intergovernmental bodies and non-governmental organizations to assist in arriving at a more precise definition of these problem areas.

40. The second concern of the study should be income distribution at international level. The study should analyse the various causes of the widening gap between rich and poor countries. It should accordingly examine the various forms of discrimination in the international sphere that prevent countries or certain areas in the world from having fair opportunities to achieve development.

41. Thirdly, the study should examine economic, social and cultural rights in accordance with the typology established by the Covenant. Many of these rights are regulated by particular provisions, and these will not necessarily be covered by the study. To start with, as regards income distribution and the right to work (art. 6 et seq. of the Covenant), radical changes are currently occurring throughout the world. Implementation of labour rights has been a key factor in the achievement of fairer income distribution in many societies. It is essential to establish empirically what the relationship is. Income distribution and health (art. 12 of the Covenant) is an area in which there exist regulations and standards established by the specialized agencies of the United Nations, and it should also be examined in the study.

42. Fourthly, the study should address the relationship between income distribution and education, in accordance with article 13 et seq. of the Covenant. This should be one of the most important aspects of the study. There is empirical evidence of a direct relationship between access to education and income distribution. In the context of equality of opportunity, exercise of the right to education is essential. Unequal income distribution often prevents large parts of the population from having access to education, and hence from exercising their rights. Then again, it is internationally proven that education is the main factor for ensuring a fairer distribution of income in society. It will also be necessary to take a look at technical and vocational training (art. 6, para. 2, of the Covenant) as a factor in equality of opportunity. The same applies to access to "technical and scientific knowledge" in respect of agriculture and food (art. 11, para. 2 (a)) and, in general, to "the benefits of scientific progress and its applications" (art. 15, para. 1 (b)) and "the development and the diffusion of science and culture" (art. 15, para. 2). Plainly, lack of access to current science and technology is a major factor of cultural discrimination in modern societies. The study should collect empirical evidence concerning the relationship between these cultural rights and income distribution, for which support and collaboration are requested from organs of the United Nations system, Governments and non-governmental organizations, particularly those specializing in education and culture.

43. Fifthly, the relationship between income distribution and extreme poverty will necessarily have to be an aspect covered by the study. It is currently being realized that extreme poverty is on the increase in various parts of the world, and this is going hand in hand with increasing cases of unfair distribution and concentrations of wealth. The study of this relationship would seem essential inasmuch as it is here that we find the highest degree of discrimination in modern society. The conclusions of the Copenhagen Summit for Social Development should be taken up and the follow-up to its resolutions at international and national levels alike should be examined.

44. The mandate of the Subcommission and Commission to the Special Rapporteur includes, in the sixth place, the search for means of determining how most effectively to strengthen activities in respect of the realization of these rights. This mandate should be discharged with due reference to the question of indicators of economic, social and cultural rights, raised by the Türk report and discussed in various United Nations bodies. It is no secret that this discussion has tended to become bogged down in the last few years. According to many of those spoken to on this subject, there is a lack of political will to develop such indicators. For others, the problem is a technical one. The points made earlier in this report show that the problem is not a technical one but a political one. Indicators that would analyse in relative and diachronic terms the realization of the right to development are absolutely necessary. Furthermore, advances in statistics make it possible to operate increasingly complex databases, as can be developed from recent reports from UNDP, WHO, UNESCO and other specialized agencies of the United Nations.

45. In the seventh place, the most effective way in which the system can contribute to improved realization of economic, social and cultural rights is by establishing a forum for the discussion of those rights. The Special Rapporteur requests the Subcommission to invite Governments, international bodies and non-governmental organizations to take an active part in debates under the agenda item relating to this issue and to devote to it just as much time as it requires and deserves.

46. Lastly, the Special Rapporteur requests the Subcommission to define the mandate in the light of the considerations set forth in this report. He suggests that emphasis be laid on the contribution that the study can make to the effective enjoyment and regulation of economic, social and cultural rights, in relation to the distribution of wealth at international and national level, poverty, particularly extreme poverty, and the right to development. Income distribution would consequently be viewed in a larger context as a prime and perhaps pre-eminent indicator for achieving equity, helping to overcome situations of poverty and ushering in equality of opportunity to which all persons have a right.

Notes

1/ Hector Gross Espiel, "Los derechos económicos, sociales y culturales, su reconocimiento, promoción y protección internacionales", Inter-American Commission on Human Rights, 1984.

2/ Ibid.

3/ J. Berting et al., Human rights in a pluralist world (Westport and London, Meckler, 1990, pp. 75-76.

4/ Gross Espiel, op. cit.

5/ Paul Hunt, Thesis, University of Waikato, New Zealand, 1955.

6/ Interview of Jürgen Habermas by Markus Schwering in the journal Humboldt, reproduced in Spanish in La Epoca, Santiago, Chile, May 1995, p. 15.

7/ Document issued by the Chilean Commission on Human Rights, Santiago, Chile, 1987.

8/ José Aylwin, op. cit.